

**OPINION
48-56**

July 27, 1948 (OPINION)

ELECTIONS

RE: Vacancy on No-Party Ballot

I should have answered your letter of July 8 sometime ago, but due to the pressure of many things, there has been a delay.

I note with regret that you have resigned as County Auditor of Pembina County and that your resignation will be effective August 1, 1948.

You cite Section 16-0807 of the North Dakota Revised Code of 1943 with reference to the filing of a petition to fill a vacancy on the no-party ballot. This statute was amended by Chapter 25 of the 1944 Special Session. The words, "or for any other cause" were omitted in Chapter 25 of the 1944 Special Session. The Legislature again amended this law in 1947 by Chapter 171. Again the words "or for any other cause" were omitted.

As the statute now exists, a vacancy on the no-party ballot may be filled due to the failure of a candidate or candidates at the primary election to receive the number of votes required by section 16-0429 of the 1943 Revised Code, "or whenever a vacancy shall exist on the no-party ballot by the conviction of a candidate of a crime or offense involving moral turpitude, or due to the death, insanity or mental incompetence of any such candidate, then and in that event, such vacancy may be filled by filing with the county auditor a petition in writing at least thirty days prior to the general election as provided by Section 16-0404 of the 1947 Supplement, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists."

If there ever was any right under the statute as it originally existed before the amendment in 1947 to fill a vacancy on the no-party ballot caused by the resignation of a nominated candidate, it does not appear that it now exists, for as indicated, the statute provides that the vacancy on the ballot can be filled only by the failure of the candidate or candidates to receive the number of votes required, or due to the conviction of a candidate of a crime or offense involving moral turpitude or due to the death, insanity or mental incompetency of any such candidate. Those are the only contingencies whereby such vacancy can be filled by petition as provided in Section 16-0404 of the 1947 Supplement.

Accordingly, it is the opinion of this office that there is no provision of the statute applicable to filling a vacancy on the ballot in such circumstances as you disclose, the statute being specific as to when such vacancy may be filled by petition as provided by Section 16-0404 of the 1947 Supplement. In other words, if any one now desires to run for county auditor of Pembina County, such person would have to run for the office on stickers.

WALLACE E. WARNER

Attorney General